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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION**

Case No. 3:17-cv-01431-JSC

**NOTICE OF MOTION AND MOTION OF  
COMPETITIVE ENTERPRISE INSTITUTE  
FOR LEAVE TO FILE AN *AMICUS  
CURIAE* BRIEF IN OPPOSITION TO  
PETITION TO ENFORCE INTERNAL  
REVENUE SERVICE SUMMONS**

Courtroom: F (15th Floor)  
Judge: Hon. Jacqueline Scott Corley

1 TO ALL PARTIES AND THEIR ATTORNEYS:

2 PLEASE TAKE NOTICE THAT the Competitive Enterprise Institute hereby moves the Court  
 3 pursuant to Civil L.R. 7-11 for leave to file a brief *amicus curiae* in the above-captioned case in  
 4 support of respondent Coinbase. A copy of the proposed amicus brief is appended as an exhibit to  
 5 this motion. Coinbase and the Intervenor consent to this motion; the government opposes it.

6 **I. STANDARD FOR MOTION FOR LEAVE TO FILE BRIEF OF AMICUS CURIAE**

7 District courts have discretion to permit non-parties to participate in a case as *amici curiae*.  
 8 *Woodfin Suite Hotels, LLC v. City of Emeryville*, No. C 06-1254 SBA, 2007 U.S. Dist. LEXIS  
 9 4467, at \*7 (N.D. Cal. Jan. 9, 2007). Such discretion is generally exercised liberally, as there are  
 10 no strict prerequisites that must be met to qualify for *amicus* status. *Id.* at \*8. The sole criterion is  
 11 that the applicant must demonstrate that its “participation is useful or otherwise desirable to the  
 12 court.” *Id.* (quoting *In re Roxford Foods Litig.*, 790 F. Supp. 987, 997 (E.D. Cal. 1991)). Trial  
 13 courts frequently accept *amicus* briefs from non-parties where the legal issues in a case “have  
 14 potential ramifications beyond the parties directly involved.” *Sonoma Falls Devs., LLC v. Nev.*  
 15 *Gold & Casinos, Inc.*, 272 F. Supp. 2d 919, 925 (N.D. Cal. 2003) (quoting *Cobell v. Norton*, 246  
 16 F. Supp. 2d 59, 62 (D.D.C. 2003)). This is just such a case. And the parties and the Court have  
 17 previously contemplated that *amicus* briefs will be filed in this very case. *See* Stipulation and  
 18 Order, ECF No. 22, at 3 (stipulating that several parties “have indicated that they may wish to file  
 19 *amicus curiae* briefs in this action”), *id.* at 7 (setting August 3 due date for *amicus* briefs).

20 **II. STATEMENT OF IDENTITY AND INTEREST OF AMICUS CURIAE**

21 Founded in 1984, Competitive Enterprise Institute (CEI) is a public interest organization  
 22 dedicated to protecting limited government and individual liberty. CEI, which is independent of  
 23 the parties to this action (and has no ties to them), has extensive experience with the subjects  
 24 addressed in their *amicus curiae* brief – such as the role of virtual currencies, the privacy and  
 25 property implications of broad government data demands in the information age, and the use and  
 26 misuse of government subpoenas.<sup>1</sup>

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<sup>1</sup> *See, e.g.*, Jim Harper & Andreas Kohl, Competitive Enterprise Institute, *Help the World's Poor*  
 28 *with a Bitcoin and Blockchain Future*, ValueWalk, May 4, 2017 (available in Westlaw); IRS

1 CEI has no parent companies or stockholders and no financial interest in this action.

2 **III. AMICUS CURIAE'S EXPERTISE WILL BENEFIT THIS COURT**

3 On the basis of its research in and familiarity with the fields of virtual currency, data  
 4 privacy, financial markets, and related areas of law, *amicus* meets the broad discretionary standard  
 5 for filing an amicus curiae brief. Moreover, CEI's brief contains an alternative legal theory for  
 6 quashing the subpoena that complements the arguments of Coinbase and the intervenor. Thus, it  
 7 has "unique information [and] perspective that can help the [C]ourt," by adding scientific context  
 8 to this record evidence. *Sonoma Falls*, 272 F. Supp. 2d at 925. Moreover, "the potential  
 9 ramifications [of this case] beyond the parties directly involved" are broad, as the outcome will  
 10 determine the scope of the privacy rights of virtual currency users – and customers of financial  
 11 institutions more generally. *Id.*

12 **IV. THIS MOTION IS TIMELY**

13 This motion has been filed within the time anticipated for seeking leave to file an *amicus*  
 14 brief. *See* May 30 order setting briefing schedule (ECF No. 22) at 7 ("August 3, 2017" is the due  
 15 date for "any motions for leave to file amicus curiae briefs").

16 **V. CONCLUSION**

17 For the foregoing reasons, CEI respectfully requests this Court's leave to submit the  
 18 attached brief *amici curiae*.

19 Respectfully submitted,

20 Dated: August 3, 2017

21 By: /s/ Theodore H. Frank  
 22 THEODORE H. FRANK (SBN 196332)

23 Attorney for *Amicus Curiae*  
 24 COMPETITIVE ENTERPRISE INSTITUTE

25 *Demands Private Consumer Data from Bitcoin Exchange*, Heartland Institute, January 26, 2017  
 26 (quoting Jim Harper about the market for Bitcoin and the IRS subpoena); Jim Harper, *The IRS Just*  
*Declared War on Bitcoin Privacy*, The Freeman, Nov. 21, 2016; Walter Olson, *Is New York's*  
*Climate-Speech Probe Constitutional?*, Cato Institute, Feb. 9, 2016 (quoting CEI lawyer about  
 27 legal issues raised by government document demands); *IRS Proposed Rules Could Illegally*  
*Restrict Speech*, CNS News, Feb. 28, 2014 (CEI lawyer discusses IRS and targeting of Tea Party).

## **CERTIFICATE OF SERVICE**

*United States of America v. Coinbase, Inc.*  
N.D. Cal Case No. 3: 17-cv-01431-JSC

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States District Court for the Northern District of California by using the CM/ECF system on **August 3, 2017**. I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I certify under penalty of perjury that the foregoing is true and correct. Executed on  
**August 3, 2017.**

/s/ Theodore H. Frank  
THEODORE H. FRANK